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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,814	09/04/2001	Franz Haimerl	FA/220A	2206

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/830,814

Applicant(s)

HAIMERL ET AL.

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 39-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08152001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 39-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper Dated April 12, 2005.

### *Specification*

2. The disclosure is objected to because of the following informalities: reference numbers 35 and 37 were used to describe the same "outsole adhesive" in the description on page 23, paragraph 4. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "shank" in claim 1 and the other independent claims is used by the claim to mean "a side portion of the upper," while the accepted meaning is "a support located in the waist of a sole."

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 9-10, 21, 23-26 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavelescu et al. 6,088,935. Pavelescu '935 discloses all the limitations of the claims including the following: a "shank" constructed of upper material and a water-tight functional layer 3', 3" partially covering the upper material 1 on the inside; the outsole 7 connected to the shank end region; the functional end region has a projection and glue zone (end of function region considered projection from the upper) that has a hot-melt adhesive that leads to water-tightness when cured and closed in the outsole peripheral direction (said to be waterproof); outsole glued to shank (see col. 5, lines 16-21); adhesive over entire length of projection width (see col. 5, lines 8-21, waterproof implies over entire width otherwise would not be water proof in area not covered); shank end region and functional layer perpendicular to sole (see Figure 4); shank end region and functional layer parallel to sole (see Figures 1 and 2); functional layer above upper material layer (see Figures 1-2); functional layer attached to insole (see Figures, functional layer 3', 3" attached to 4 which is part of insole); functional layer joined to insole by seam (see col. 5, lines 38-58); upper and functional layer attached by glue (see col. 5, lines 11-16); adhesive applied to outside of strips to attach to sole (see Figure 4 and col. 5, lines 56-58); functional layer is water-tight and vapor-permeable (see col.4, line 10-col.5, line 7); outsole is shell shaped (see Figure 4); outsole is plate (see Figure 2). With respect to the method

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claims, the operation of use and manufacture of the Pavelescu meets these limitations of the claims.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8, 11-19 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavelescu et al. 6,088,935 as applied above in view of Aumann 5,711,093. Pavelescu et al. '935 as applied above discloses substantially all the limitations of the claims including the strip attached to the upper along a first long side by glue or stitched (see Figure 1-2 and 4) and the second long side of the mesh strip is attached to the functional end region (see 3' and 3'' in Figure 4). Pavelescu et al. '935 does not teach the functional layer being mesh material. Aumann '093 teaches that the functional layer V in a water-proof shoe can be mesh material that allows for the water-proof glue to pass through and seal the mesh material to the upper and sole. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the functional layer of Pavelescu et al. out of mesh material, as taught by Aumann '093, to allow for the glue or adhesive to pass through the material and fasten it onto the upper and sole and still provide water-proofing for the shoe.

9. Claims 20, 22, 34-36 and 38 are rejected under 35 U.S.C. 103(a) as being obvious over Pavelescu et al. 6,088,935 as applied above. Pavelescu et al. '935 as applied above discloses all

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the limitations of the claims except for the string lasting and the EPTFE used in making the shoe waterproof. String lasting is taught in Pavelescu to attach the upper to the shoe (Strobel).

Therefore it would have been obvious to string last the functional layer that is attached to the upper, to the sole as well when string lasting the upper. Furthermore, since EPTFE is a well known waterproofing material in the art of shoemaking, it would have been obvious, to one of ordinary skill in the art, to use EPTFE as the functional layer for it's well-known properties of waterproofing and vapor permeability. Furthermore, using a pressing device to press the pieces of a shoe together during the gluing, while using known glues that are curable by means of moisture or thermally activated is a well-known practice in the art of shoemaking.

### ***Conclusion***

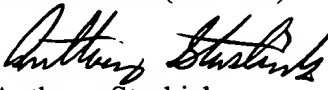
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS